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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEVADA**

9
10 SECURITIES AND EXCHANGE COMMISSION,
11

12 Plaintiff,

13 v.

14 MATTHEW WADE BEASLEY et. al.

15 Defendants,

16 THE JUDD IRREVOCABLE TRUST et. al,

17 Relief Defendants.

Case No. 2:22-cv-0612-CDS-EJY

**NON-PARTY KAMILLE DEAN'S
OBJECTION TO THE AFFIDAVITS OF
KARA HENDRICKS (DKT. 210-2) AND
DAVID ZARO (DKT. 210-3)**

TIME: TBD
DATE: TBD
PLACE: Courtroom 6B

A. Introduction

Non-Party Kamille Dean submits this Objection to the Affidavits of Kara Hendricks (Dkt. 210-2) and David Zaro (Dkt. 210-3). The Hendricks and Zaro Affidavits are hearsay, surmise, and speculation admittedly made without personal knowledge and based on inadmissible evidence. Fed. R. Evid. 801; *Automatic Radio Mfg. Co. v. Hazeltine Research, Inc.*, 339 U.S. 827, 831 (1950) (declaration based on hearsay without personal knowledge is inadmissible). Without exception, the Affidavits lack personal knowledge and cannot support the mandatory requirements of a contempt proceeding. *Hovey v. Elliott*, 167 U.S. 409, 422 (1897) (affidavit of disobedience necessary for contempt proceeding); *Autotech Techs. LP v. Integral Rsch. & Dev. Corp.*, 499 F.3d 737, 751 (7th Cir. 2007) (“One consequence of this failure [to submit sufficient affidavits in support of contempt] was that it neglected to provide enough information to carry its burden of proof.”). The Court should disregard and strike the Hendricks and Zaro Affidavits as inadmissible testimony. *See, e.g., FDIC v. New Hampshire Ins. Co.*, 953 F.2d 478, 484 (9th Cir. 1991)(affidavit containing testimony not admissible at trial subject to objection and should be stricken); *Moreno v. Autozone, Inc.*, 2007 WL 1063433, at *5 (N.D. Cal.2007) (“First, Moreno asks the Court to accept her attorney’s hearsay testimony for the truth of the matter asserted, something that it cannot do. Federal Rules of Evidence 801, 802.”).

This Objection will examine each of the Hendricks and Zaro statements and will demonstrate Attorneys Hendricks and Zaro have no personal knowledge of any of the matters showing the necessary elements to a Contempt Citation or a Turn Over Order.

B. Grounds for Objections

Testimony

Objection

1. Entire Affidavit	Irrelevant; insufficient to support Contempt Citation or Turn Over Order
2. “As referenced in prior pleadings, Judd dispersed millions of dollars to multiple law firms, for representation in the multiple lawsuits he would inevitably face for his role in the Ponzi-scheme alleged in the complaint and subsequent court filings. This included Judd providing \$250,000 to the law office of Kamille Dean, P.C.” (Receiver 8-1-22 Memo, p. 3, lines 13-16).	Irrelevant; hearsay; lack of personal knowledge; speculation and surmise; no supporting testimony

<p>3. "On July 7, 2022, my office sent a letter to Ms. Dean requesting she file an appropriate motion with the court by July 13, 2022, regarding funds she received from Jeffery J. Judd that had not been turned over to the Receiver. (Hendricks 8-1-22 Affidavit, p. 2, lines 12-14).</p>	<p>Hearsay; speculation and surmise; lack of foundation; no foundation as to the source of the funds; lack of personal knowledge as to the source of the funds</p>
<p>4. "Numerous email correspondence and discussions were had between Ms. Dean and my office regarding the turnover of the \$250,000 she was provided by Defendant Jeffery Judd." Zaro 8-1-22 Affidavit, p. 2, lines 13-14).</p>	<p>Hearsay; speculation and surmise; no foundation as to the source of the funds; lack of personal knowledge as to the source of the funds</p>
<p>5. "I spoke with Ms. Dean on June 23, 2022, and conveyed that she was obligated by the Appointment Order to turn over to the Receiver the balance of funds in her trust account and provide us with an accounting with regard to the money that she had received and any funds that she had withdrawn. Ms. Dean was adamant that she should not have to do this and was quite angry that the Receiver was making this request. However, when we ended the call, Ms. Dean told me that she was going the Bank and would send the Receiver \$88,620.00. (Zaro 8-1-22 Affidavit, p. 2, lines 19-24).</p>	<p>Hearsay; speculation and surmise; lack of personal knowledge as to the source of the funds; lack of foundation as to the source of the funds; irrelevant</p>

C. Basis for Objections

The Receiver's Affidavits submitted in support of the Contempt citation are wholly deficient and fail to provide facts necessary to support a contempt proceeding. *Hovey v. Elliott*, 167 U.S. 409, 422 (1897) (affidavit of disobedience necessary for contempt proceeding). The Affidavits do not contain the essential elements necessary to initiate a contempt proceeding. *O'Neal v. United States*, 190 U.S. 36, 37 (1903) (contempt of court is commenced upon the filing of an affidavit setting forth the facts of the contempt). The affidavits of Attorneys Zaro and Hendricks are insufficient to support an OSC re Contempt. *Autotech Techs. LP v. Integral Rsch. & Dev. Corp.*, 499 F.3d 737, 751 (7th Cir. 2007) ("One consequence of this failure [to submit sufficient affidavits in support of contempt] was that it neglected to provide enough information to carry its burden of proof.").

1 **1. The Receiver's Affidavits fail to state a claim**

2 The Receiver's Memorandum, but not Ms. Hendricks or Mr. Zaro's affidavits, states:

3 "As referenced in prior pleadings, Judd dispersed millions of dollars to multiple law firms,
4 for representation in the multiple lawsuits he would inevitably face for his role in the Ponzi-scheme
5 alleged in the complaint and subsequent court filings. This included Judd providing \$250,000 to the
6 law office of Kamille Dean, P.C." (Receiver 8-1-22 Memo, p. 3, lines 13-16).

7 However, there is no evidence or testimony to support the claim Ms. Dean received money from Mr.
8 Judd because she received the funds from all of her six (6) Clients. Not only is there no testimony in any of
9 the prior pleadings about the money in Ms. Dean's account, but also the unsworn argument of counsel in a
10 legal memorandum is not evidence. *INS v. Phinpathya*, 464 U.S. 183, 189 n.6 (1984)(unsworn arguments
11 and statements by counsel in a brief are not evidence and entitled to no evidentiary weight). The hearsay
12 and supposition contained in the Receiver's OSC re Contempt is beyond all bounds of incompetent
13 evidence. *United States v. Polizzi*, 801 F.2d 1543, 1558 (9th Cir. 1986) ("statements and argument of
14 counsel are not evidence."). To hold an attorney in contempt there must be evidence that the attorney
15 "deliberately or recklessly disregarded his obligation to the court, or intended some disrespect to the court."
16 *DeVaughn v. District of Columbia*, 628 F.2d 205, 207 (D.C. Cir. 1980).

17 The Hendricks and Zaro Affidavits do not come close to constituting the mandatory Affidavit
18 necessary to bring a contempt proceeding because they contain none of the jurisdictional elements or
19 evidence to show a contempt of court. *Hovey v. Elliott*, 167 U.S. 409, 422, 17 S. Ct. 841, 846, 42 L. Ed. 215
20 (1897) (affidavit of disobedience necessary for contempt proceeding). A contempt of court occurs only
21 were (1) there is a valid order, (2) the contemnor has notice of the Order, (3) the contemnor has the ability to
22 comply with the order, and (4) the contemnor had disobeyed the commands of the Order. *Carrick v. Santa*
23 *Cruz Cnty.*, 2013 WL 3802809, at *6 (N.D. Cal. July 16, 2013), *aff'd*, 594 F. App'x 443 (9th Cir. 2015)
24 ("The Court notes that, in a civil contempt proceeding, "[t] he party alleging civil contempt must
25 demonstrate that the alleged contemnor violated the court's order by 'clear and convincing evidence[.]'"). In
26 this case, there is not one scrap of evidence, and the Hendricks and Zaro Affidavits do not purport to
27 provide any evidence or basis for a contempt of Court against Ms. Dean. *United States v. United Mine*
28 *Workers of Am.*, 330 U.S. 258, 268 (1947)("It is apparent that the alleged facts set out in the unverified
 Petition and in the [contempt] affidavit of Captain Collisson, filed in support of the Rule, are based wholly
 upon hearsay, information and belief and are not sufficient to sustain the Rule to Show Cause."); *United*
 States v. Bukowski, 435 F.2d 1094, 1105-06 (7th Cir.1970) ("the standard for proof of guilt assumes the
 competency of the evidence considered in testing its sufficiency. We see no grounds for departing in
 contempts from established federal rules regulating the competency of evidence"); 17 C.J.S. *Contempt* § 89

1 ("Under the general rules of evidence which are applicable in civil or criminal proceedings, evidence which
2 is not competent, relevant, and material is inadmissible in a contempt proceeding").

3 **2. The Hendricks Affidavit is hearsay**

4 Attorney Hendricks's Affidavit seeks to incorporate numerous hearsay emails containing speculation
5 and supposition without any evidentiary support. *SEC v. World Information Technology, Inc.*, 250 F.R.D.
6 149, 152 (S.D.N.Y. 2008) (emails attached to declaration inadmissible as hearsay where "offered to
7 establish the truth of the matter asserted" in the emails). Attorney Hendricks states:

8 "On July 7, 2022, my office sent a letter to Ms. Dean requesting she file an appropriate
9 motion with the court by July 13, 2022, regarding funds she received from Jeffery J. Judd that had
10 not been turned over to the Receiver. (Hendricks 8-1-22 Affidavit, p. 2, lines 12-14).

11 However, Attorney Hendricks never identifies who her "office" might be and such hearsay is
12 improper. She assumes with improper supposition and without providing any proof that Ms. Dean is
13 obligated to file a motion regarding funds from Mr. Judd. *Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*,
14 627 F.2d 919, 928 (9th Cir. 1980) (affirming district court's decision to strike affidavit "on the grounds that
15 the statements were speculative, conclusory, and unqualified opinion testimony"). However, she has no
16 evidence that Ms. Dean ever received money from Mr. Judd. She assumes that Ms. Dean is somehow
17 obligated to file a motion with the Court and that it is Ms. Dean's burden to meet the Receiver's demands
18 that a motion be filed when the Receiver has not established any basis to make demands on Ms. Dean.
19 *Southern Calif. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003)(testimony lacking in
20 foundation is inadmissible in affidavits).

21 Evidence that would not be admissible under established federal rules regarding the competency of
22 evidence at trial may not be considered on a motion for contempt. *See United States v. Bukowski*, 435 F.2d
23 1094, 1105-06 (7th Cir.1970) ("the standard for proof of guilt assumes the competency of the evidence
24 considered in testing its sufficiency. We see no grounds for departing in contempts from established federal
25 rules regulating the competency of evidence"); 17 C.J.S. *Contempt* § 89 ("Under the general rules of
26 evidence which are applicable in civil or criminal proceedings, evidence which is not competent, relevant,
27 and material is inadmissible in a contempt proceeding").

28 Ms. Hendricks has no personal knowledge that Ms. Dean received money from Jeffrey Judd, and her
speculation is improper. Fed. R. Evid. 602 (witness must show personal knowledge). The Receiver has no
evidence to support any of these claims. The request for Order to Show Cause re Contempt should be
stricken.

1
2 **3. The Zaro Affidavit is irrelevant hearsay**

3 **a. Attorney Zaro lacks personal knowledge**

4 "Numerous email correspondence and discussions were had between Ms. Dean and my office
5 regarding the turnover of the \$250,000 she was provided by Defendant Jeffery Judd." Zaro 8-1-22
6 Affidavit, p. 2, lines 13-14).

7 However, Attorney Zaro's claim that "\$250,000 was provided by Defendant Jeffery Judd" is a fiction
8 based on no evidence and lacking personal knowledge. *United States v. Ventresca*, 380 U.S. 102, 122
9 (1965) ("Moreover, there is not a single statement in the affidavit that could not well be hearsay on hearsay
10 or some other multiple form of hearsay."). Who is meant by Mr. Zaro's "office" is never identified. Ms.
11 Dean never made any such statement to Mr. Zaro and it is improper for an attorney to create such a
12 statement for his "office" from whole cloth where the attorney lacks any foundation or personal knowledge.
13 *Le v. Humphrey*, 2012 WL 12871812, at *13 (N.D. Ga. Aug. 10, 2012) ("In considering petitioner's motion
14 for sanctions and contempt, the court has disregarded the affidavit to the extent that it is not based on
15 personal knowledge, is based on hearsay, or contains legal conclusions."). Attorney Zaro's numerous emails
16 are irrelevant hearsay. *Hill v. Rayboy-Brauestein*, 467 F. Supp. 2d 336, 361 (S.D.N.Y. 2006) (unsworn
17 letter attached to affidavit is hearsay). See Fed. R. Evid. 802; *United States v. Demosthene*, 334 F. Supp. 2d
18 378, 382 (S.D.N.Y. 2004) ("an unsworn, out-of-court statement by a testifying witness ... may not be
19 admitted to prove the truth of the matters asserted therein"), *aff'd*, 173 F. App'x 899 (2d Cir. 2006).

20 Contempt affidavits must be based on personal knowledge and contain admissible evidence. *United*
21 *States v. United Mine Workers of Am.*, 330 U.S. 258, 268 (1947) ("It is apparent that the alleged facts set out
22 in the unverified Petition and in the [contempt] affidavit of Captain Collisson, filed in support of the Rule,
23 are based wholly upon hearsay, information and belief and are not sufficient to sustain the Rule to Show
24 Cause."). Evidence that would not be admissible under established Federal Rules regarding the competency
25 of evidence at trial may not be considered on a motion for contempt. See *United States v. Bukowski*, 435
26 F.2d 1094, 1105-06 (7th Cir.1970) ("the standard for proof of guilt assumes the competency of the evidence
27 considered in testing its sufficiency. We see no grounds for departing in contempts from established federal
28 rules regulating the competency of evidence"); 17 C.J.S. *Contempt* § 89 ("Under the general rules of
evidence which are applicable in civil or criminal proceedings, evidence which is not competent, relevant,
and material is inadmissible in a contempt proceeding").

b. Attorney Zaro's pejorative comments are irrelevant

Attorney Zaro testifies:

1 "I spoke with Ms. Dean on June 23, 2022, and conveyed that she was obligated by the
 2 Appointment Order to turn over to the Receiver the balance of funds in her trust account and provide
 3 us with an accounting with regard to the money that she had received and any funds that she had
 4 withdrawn. Ms. Dean was adamant that she should not have to do this and was quite angry that the
 5 Receiver was making this request. However, when we ended the call, Ms. Dean told me that she was
 6 going the Bank and would send the Receiver \$88,620.00. (Zaro 8-1-22 Affidavit, p. 2, lines 19-24).

7 However, Mr. Zaro is an Attorney who has filed a fatally defective Order to Show Cause re
 8 Contempt lacking evidence and in violation of 28 U.S.C. section 754 which has lead the witness to
 9 speculation and mischaracterizing Ms. Dean as being angry. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d
 10 1253, 1263 (9th Cir. 2010) (*citing* California State Bar's Civility Guidelines and stating "Such
 11 uncompromising behavior is not only inconsistent with general principles of professional conduct, but also
 12 undermines the truth-seeking function of our adversarial system" and "Our adversarial system relies on
 13 attorneys to treat each other with a high degree of civility and respect."). There is no purpose to such
 14 testimony and the witness's baseless characterization is irrelevant. *Smith v. Pacific Bell Telephone Co.,*
 15 *Inc.*, 649 F. Supp. 2d 1073, 1087 (E.D. Cal. 2009) (affidavits containing irrelevant testimony are
 16 inadmissible). The claim that Ms. Dean was angry is an inadmissible conclusion with no supporting facts.
 17 *Schwimmer v. Sony Corp. of America*, 637 F.2d 41, 43 (2d Cir. 1980) (affidavits containing conclusions are
 18 a nullity).

19 Ms. Dean was never angry toward Mr. Zaro, and she never promised she would make any payment
 20 to the Receiver other than stated in her June 24, 2022, Letter (Dean Declaration in Support of Motion to
 21 Quash, Exhibit "D"). . Rather, Ms. Dean at all times was courteous and professional, and it is the Receiver
 22 and his attorneys who have to use pejoratives to create a false narrative. *La Jolla Spa MD, Inc. v. Avidas*
 23 *Pharm., LLC*, 2019 WL 4141237, at *1 (S.D. Cal. Aug. 30, 2019) ("In today's combative, battle-minded
 24 society, the lay perception of a 'good' attorney is someone who engages in the obstreperous, scorched-earth
 25 tactics seen on television and makes litigation for the opposing side as painful as possible at every turn.
 26 However, outside the fictional absurdities of television drama, attorneys in the real world—presumably
 27 educated in the law and presumably committed to upholding the honor of the profession—should know and
 28 behave much more honorably.").

Mr. Zaro's testimony is irrelevant. *Scosche Industries, Inc. v. Visor Gear, Inc.*, 121 F.3d 675, 681
 (9th Cir. 1997) ("In any event, the mere characterization of Visor Gear's contact with Tandy as 'harassing'
 would not be sufficient, even if unrebutted, to support a judgment in favor of Scosche on its unfair
 competition claim. Alves' declaration is therefore insufficient to enable Scosche, which would bear the
 burden of proof at trial"). The testimony makes assumptions which lack foundation and have no basis in
 fact. *Townsend v. Monster Beverage Corp.*, 303 F. Supp. 3d 1010 (C.D. Cal. 2018) ("Plaintiffs fail to show

1 that Dr. Maronick's assumption that energy drink consumers are energy drink purchasers is grounded in
2 anything other than his unsupported speculation."). Attorney Zaro's speculation is inadmissible. *California*
3 *Found. for Indep. Living Centers v. Cty. of Sacramento*, 142 F. Supp. 3d 1035, 1045 (E.D. Cal. 2015)
4 ("Courts have found lay witness testimony unhelpful and thus inadmissible if it is mere speculation, an
5 opinion of law, or if it usurps the jury's function.").

6 **D. Conclusion**

7 For the forgoing reasons, Non-Party Kamille Dean requests that her Objections to the Affidavits of
8 Kara Hendricks and David Zaro be sustained.

9 August 15, 2022

10 KAMILLE DEAN

11 

12 By: _____
13 Kamille Dean
14 Attorney in Pro Se

PROOF OF SERVICE

I, Maureen Jaroscak, am an attorney at law. I am over the age of 18 and not a party to the within action. My business address is 1440 Harbor Boulevard, Suite 900, Fullerton, CA 92835.

On August 15, 2022, I served the following document described as:

- (1) NON-PARTY KAMILLE DEAN'S NOTICE OF MOTION AND MOTION TO QUASH JURISDICTION OVER KAMILLE DEAN AND ORDER TO SHOW CAUSE RE CONTEMPT AND TURN OVER ORDER (DKT 210);
- (2) NON-PARTY KAMILLE DEAN'S NOTICE OF MOTION AND MOTION TO STRIKE OSC RE CONTEMPT AND TURN OVER ORDER (DKT. 210) FOR JURISDICTIONAL DEFECTS;
- (3) NON-PARTY KAMILLE DEAN'S NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE INTERPLEADER COMPLAINT;
- (4) NON-PARTY KAMILLE DEAN'S OBJECTION TO THE AFFIDAVITS OF KARA HENDRICKS (DKT. 210-2) AND DAVID ZARO (DKT. 210-3)

on all interested parties in this action by serving a true copy through electronic service by gmail.com on the email addresses and parties indicated below. The machine indicated the electronic transmission was successfully completed as follows:

SEE ATTACHED SERVICE LIST:

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 15, 2022, at Fullerton, California.

/s/ Maureen Jaroscak

Maureen Jaroscak

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Notice has been delivered placing a copy of the documents in a sealed envelope, first class and affixed thereto, deposited into the US. Mail, at Los Angeles, California, addressed as follows:

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